

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF TRANSPORTATION

In the Matter of the Petition  
of Merchants Delivery  
Moving & Storage Co. for  
Household Goods Mover  
Permit Authority

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis on June 29, 2004, at the Office of Administrative Hearings, 100 Washington Square, Minneapolis, Minnesota. The hearing record closed at the conclusion of the hearing on June 29, 2004.

James V. Hovland, Krause and Rollins, 310 Groveland Avenue, Minneapolis, Minnesota 55403 appeared on behalf of Merchants Delivery Moving & Storage Co. (Applicant). James Eastman, President of Applicant, 1215 State Street, P.O. Box 728, Racine, Wisconsin 53403, also appeared at the hearing.

Douglas B. Bester, President, Bester Brothers Transfer and Storage Company, Inc. (Bester Bros.), 260 Hardman Avenue South, South St. Paul, MN 55075, appeared on behalf of Bester Bros. (Protestant).

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Carol Molnau, Commissioner, Minnesota Department of Transportation, 395 John Ireland Boulevard, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon expiration of the deadline for

doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **STATEMENT OF ISSUES**

Whether the Commissioner should grant Applicant an “all points” intrastate household goods mover permit authority, which would be the initial Minnesota permit authority for the Applicant.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

### **Background and Procedural Requirements**

1. Merchants Delivery Moving & Storage Co. is a Wisconsin-based moving company providing household relocation services throughout the continental United States. Applicant was founded by E.W. Eastman in 1922. The business was incorporated in 1947. Applicant’s current President, James Eastman, is the grandson of the founder.

2. Under Minnesota law, moving companies must apply to the Commissioner of Transportation to obtain household goods mover permit authority within the state.<sup>[\[1\]](#)</sup> Moving companies may apply for new authority, an extension of their current authority, or a transfer of authority from another company. Applicant filed a petition for new authority with the Department on December 24, 2003.

3. Applicant is seeking authority to transport household goods from all points to all points within the State of Minnesota.

4. On January 9, 2004, a Notice of the Petition was published in the Department’s Transportation Regulation Proceedings Notice and Hearing Bulletin. The Notice set a protest date of January 29, 2004.

5. By letter dated January 19, 2004, Bester Bros. filed a Petition to Intervene and Notice of Intent to Appear to protest the grant of authority to Applicant. No other protests were filed.

6. On May 10, 2004, the Department issued a Notice of Hearing setting the hearing for June 15, 2004. The Notice listed the protest filed by Bester Bros. The

hearing date was rescheduled to June 29, 2004, by the agreement of the parties. The Notice of Hearing cites Minn. Stat. § 221.121, which requires the Commissioner to make findings regarding aspects of Applicant's business and the existing market for moving services.

### **Applicant's Fitness and Ability to Conduct the Proposed Operations**

7. Minn. Stat. § 221.121, subd. 1(b) requires an applicant to show that it is "fit and able to conduct the proposed operations ...." Applicant conducts the moving of household goods in the form of relocations. Applicant holds 48 state household goods authority from the Federal Highway Administration. In 2003, Applicant conducted 1085 household goods relocations. Approximately 90% of Applicant's moving business is interstate relocations. Applicant conducts intrastate relocations in Wisconsin, Illinois, and Iowa. Applicant also conducts household goods storage, which accounts for approximately 7% of the Applicant's overall business.<sup>[2]</sup>

8. Applicant maintains offices and a storage facility in Racine, Wisconsin.<sup>[3]</sup> The hauling is performed using company-owned equipment. Applicant has 31 Class A tractors, 40 trailers, and 7 straight trucks. Applicant has two mechanics on staff to perform the necessary maintenance on the equipment. Applicant has a total of 91 employees, 65 of whom are drivers.

9. As of December 31, 2003, Applicant's assets totaled \$3,895,668, current liabilities totaled \$1,805,037, resulting in a total net worth of \$2,090,631.<sup>[4]</sup>

### **Applicant's Demonstration Regarding Safety Standards**

10. Minn. Stat. § 221.121, subd. 1(b) requires an applicant to show that its vehicles meet the Department's safety standards. Applicant maintains a replacement schedule for its hauling equipment to ensure safety and availability of trucks. In addition to employing its own mechanics, Applicant conducts training programs and an incentive program to improve driver safety.<sup>[5]</sup>

### **Applicant's Demonstration of Need for Statewide Authority**

11. Applicant's service is more than hauling household goods. Applicant's relocation services include the packing of an entire household, including clothing, appliances, and lawn and garden tools. Applicant maintains a training facility in its offices to ensure that packing for relocation is performed in a consistent manner and to ensure quality service.<sup>[6]</sup> The work is performed by company employees from beginning to end. The relocated person's motor vehicle may also be included among the items moved.

12. For its business, Applicant relies upon preexisting arrangements with businesses and corporate relocation specialists. Applicant submits its bids in response to companies' requests for proposals. As a result, Applicant maintains a longstanding relationship with its customers, businesses which frequently relocate their employees. Applicant relies upon its business reputation for service in maintaining these

relationships, since Applicant would typically not be able to match the lowest bidder for hauling.<sup>[7]</sup>

13. Applicant described the services used by its competitors as relying upon a van line for hauling and agents to perform the packing and unpacking at each end of the move.<sup>[8]</sup> Each job is individually bid and often goes to the lowest-cost bidder. This process may have three or four different parties (agents, hauler, and packers) combining to provide the move. The level of service quality available through these services is, in Applicant's experience, insufficient to meet customer demand.<sup>[9]</sup>

14. Douglas Laundrie, Jr., Salesman for Corporate Relocation Services (CRS) of Green Bay, Wisconsin, testified in support of Applicant's petition for intrastate authority. CRS handles coordination of employee relocations for businesses. CRS's customers include eight major corporations that conduct regular employee relocations. Laundrie indicated that one account with CRS relocates approximately 100 employees per year and uses Applicant exclusively for relocations, where Applicant has authority to haul. This business encouraged Applicant to apply for intrastate authority in Minnesota. This business has indicated that it will use Applicant's service as soon as intrastate authority is obtained. The business indicated that the quality of service was the reason that it wanted Applicant to obtain Minnesota intrastate authority.<sup>[10]</sup>

15. CRS has two customers in Minnesota that conduct regular intrastate relocations that desire to use Applicant's services. One customer is a corporation headquartered in Eden Prairie. The other customer has substantial operations near Red Wing and Monticello.<sup>[11]</sup> Based on CRS's experience with these customers, CRS expects these customers to use Applicant's services exclusively. Customers have asked CRS for certain of Applicant's crews by name when arranging for relocation services. In 2003, CRS arranged four or five intrastate relocations in Minnesota.<sup>[12]</sup> CRS used Mohawk Moving and Storage (Mohawk) for these relocations, since Applicant was not available. Based on negative experiences with other haulers, CRS does not want to use any hauler other than Applicant for domestic relocations.<sup>[13]</sup>

16. Bonnie Sikora is the Administrator of Relocation and International Services for Case New Holland (CNH), a corporation headquartered in Lake Forest, Illinois. CNH has 250 relocations every year, with 175 occurring within the United States. Applicant conducts all of the domestic relocations needed by CNH.<sup>[14]</sup> The use of employee crews, the provision of end-to-end service, the absence of complaints, and the amount of positive comments are reasons that CNH uses Applicant's services exclusively.<sup>[15]</sup> CNH wants Applicant to have Minnesota intrastate authority so that CNH will have the option of using Applicant's services should a Minnesota intrastate relocation arise.<sup>[16]</sup>

17. Sikora testified that, as used by CNH, relocations are different than ordinary hauling provided by household goods movers. The circumstances of the relocation and desired outcome by the customer require a higher standard of service than is usually available in the market.<sup>[17]</sup> CNH would require any intrastate hauler in

Minnesota to hold a certification from a relocation organization before contracting with that hauler for an employee relocation.<sup>[18]</sup>

18. Debra Armbruster, Employment Services Manager for U.S. Bank, testified in support of Applicant's petition for authority. U.S. Bank provides "pack-haul-unpack" benefits for relocated employees.<sup>[19]</sup> Between 300 and 400 U.S. Bank employees receive this benefit annually. Within Minnesota, transfers run between the Twin Cities and Rochester, Duluth, and Saint Cloud. In 2003, U.S. Bank had 4 relocations originating and terminating within Minnesota. In 2004, U.S. Bank has had 3 such relocations as of the date of the hearing.

19. Minnesota Employee Relocation Council (MERC) is a state-wide voluntary organization that establishes standards and practices to meet the needs of businesses that assist in relocating transferred employees. Applicant is a member of MERC. Debra Armbruster was the President of MERC in 2003 and 2004.

20. Applicant is a member of Wisconsin Employee Relocation Council (WERC). WERC has the same mission and functions as MERC. Bill Werth, Vice President of Sales and Marketing for Applicant, is the incoming President of WERC.<sup>[20]</sup> CRS is also a member of WERC.

21. The Employee Relocation Council (ERC) is a national body established to provide standards and certifications for persons engaged in relocations. Applicant is a member of the ERC.<sup>[21]</sup> Applicant's employees are Certified Relocation Professionals (CRPs). To become a CRP, one must pass the testing offered through the ERC.

### **Evidence Presented by the Intervening Carrier**

22. The Protestant, Bester Bros., called witnesses to testify regarding other carriers' experiences in meeting the need for moving household goods in Minnesota. Edward Kocourek, President of Lovelette Transfer (Lovelette), described his household goods moving business in Minnesota. Lovelette has been operating at 80 to 85 percent of its capacity. Lovelette does not provide relocation services. Almost all of Lovelette's business is individually arranged household moving (known as C.O.D., or cash-on-delivery moves). In C.O.D. moves, the homeowner or an agent will arrange for hauling. The household goods will usually be packed by the homeowner, but may be packed by the mover, or contractors hired by the mover or agent.

23. Douglas Harrison, President of Harco Moving & Storage, Inc. (Harco) was called by Bester Bros. to testify against the need for Applicant's expanded permit authority. Harco is an affiliate of Wheaton Van Lines (Wheaton) for providing interstate moving services.<sup>[22]</sup> Harco bids on work performed for Wheaton Van Lines. If packing is involved, Harco uses employees or contract packers. Harco employs seven drivers. Harco also uses independent contractor drivers, two for long haul and one for short haul loads. The company rarely turns down intrastate moves, and Mr. Harrison stated that Harco would be able to do business for U.S. Bank. Harco has never contacted U.S. Bank to solicit business. Harco is not a member of MERC.

24. Approximately 70% of Harco's business is C.O.D. household moves. Another 20% of Harco's business is interstate moves (half of which are C.O.D. and the other half originating from its national account with Wheaton). The remaining 10% of Harco's business are commercial accounts (including relocation of law offices and senior assisted-living furnishings). Harco does not provide corporate employee relocation services.

25. Casimir Prokop, Vice President of Alan Metcalf Moving and Storage, Inc. (Metcalf), testified on behalf of Bester Bros.<sup>[23]</sup> Metcalf operates as a franchise agent of Mayflower Transit Company. Metcalf actively solicits corporate relocation business. Metcalf is a member of MERC. All franchise employees working for Mayflower are CRPs.

26. Metcalf is not operating at full capacity. Mr. Prokop maintained that customers are obtaining many estimates in the market for household movers, since existing capacity exceeds demand for household mover services. Half of Metcalf's business is intrastate moving.<sup>[24]</sup> Prokop described Metcalf as committed to quality work. He described advising customers of their rights by providing a brochure. The process Prokop described for meeting competition for interstate business falls in the category of C.O.D. hauling. None of the business described in Prokop's testimony fits the description of corporate relocations.

27. An analysis of Metcalf's business in January through May 2004 showed a decline of 12% from the previous year. Local moving has declined by 37% for Metcalf this year. Metcalf has a contract with IBM in Rochester, Minnesota. Business on that contract has declined 19% from the previous year.<sup>[25]</sup>

28. Douglas Bester testified about Bester Bros., his family's business since 1917. Bester Bros. holds household goods mover intrastate statewide authority in Minnesota. Bester Bros. uses palletized containers and maintains a storage facility. Bester Bros. actively solicits work from businesses. All of Bester Bros. work is done by employees. In support of its contention that there is no need for an additional household mover in Minnesota, Bester Bros. placed a telephone directory into the record.<sup>[26]</sup> Bester Bros. described its services generally as being competitive in pricing and services. Examples of personalized service were described by Bester Bros. as provided by any household goods mover that wants to stay in business.<sup>[27]</sup>

29. Bester Bros. has 8 straight trucks, 3 cube vans, and 3 tractors for conducting business.<sup>[28]</sup> Bester Bros. has 58 employees, 15 of whom are drivers.<sup>[29]</sup> Bester Bros. indicated that at least 90% of its moves were C.O.D. moves. Half of Bester Bros.' revenue derives from commercial moves. These commercial moves are businesses themselves, not corporate employee relocations.<sup>[30]</sup> Bester Bros. is not a member of any employee relocation council.

## CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minnesota Department of Transportation have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 174.65.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Minnesota law provides that persons desiring to hold themselves out as a carrier of household goods or to engage in that business must first apply for and obtain a household goods mover permit from the Department.<sup>[31]</sup>

4. Minnesota law requires that an applicant for a household goods mover permit meet the following four conditions before the Commissioner can grant that authority:

- (a) that the petitioner is fit and able to conduct the proposed operations;
- (b) that the petitioner's vehicles meet the safety standards established by the department;
- (c) that the area to be served has a need for the transportation services requested in the petition; and,
- (d) that existing carriers have failed to prove that they offer sufficient services to fully and adequately meet the need.<sup>[32]</sup>

5. The Department has further defined the term "fit and able" in its rules:

The term "fit and able" shall mean that the applicant is financially able to conduct the proposed business; that the applicant's equipment is adequate and properly maintained; that the applicant is competent, qualified, and has the experience necessary to conduct the proposed business; that the applicant is mentally and physically able to comply with rules and statutes of the commissioner of transportation.<sup>[33]</sup>

6. Applicant has the burden of proving by a preponderance of the evidence that he has met the conditions described in subparagraphs (a), (b), and (c) of Conclusion No. 4. If that burden is met, then the intervening carriers have the burden of proving by a preponderance of the evidence that other carriers offer sufficient services to fully and adequately meet the need.<sup>[34]</sup>

7. Applicant has shown by a preponderance of the evidence that it is fit and able to conduct the proposed operations, that its vehicles meet the safety standards established by the Department, and that the area to be served has a need for the transportation services requested in the petition.

8. The existing carriers have not shown that they offer sufficient services to fully and adequately meet the market's need.



Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that the Commissioner GRANT Applicant's Petition for household goods mover permit authority from and to all points in the State of Minnesota.

Dated: July 22, 2004.

/s/ Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

Reported: Tape recorded (4 tapes). No transcript prepared.

### **MEMORANDUM**

In this proceeding, Applicant is seeking all-points intrastate authority for moving household goods. The issuance of such authority is governed by Minn. Stat. § 221.121, subd. 6a. Under that statute, a permit applicant must meet the standards set out in Minn. Stat. § 221.121, subd. 1, which states in pertinent part:

(b) The commissioner, after notice to interested parties and a hearing, shall issue the permit upon compliance with the laws and rules relating to it, if it finds that petitioner is fit and able to conduct the proposed operations, that petitioner's vehicles meet the safety standards established by the department, that the area to be served has a need for the transportation services requested in the petition, and that existing permit and certificated carriers in the area to be served have failed to demonstrate that they offer sufficient transportation services to meet fully and adequately those needs  
.... [\[35\]](#)

Applicant has demonstrated its experience in the business of moving household goods. Applicant has amply demonstrated that it has the equipment, finances, and ongoing business structure to support the proposed intrastate hauling that would be authorized by the permit sought by Applicant. There is no issue in this proceeding that Applicant's vehicles meet the Department's safety standards. The only issues in this proceeding are whether a need exists for the proposed services and whether the existing permitted carriers meet that need.



In household moving authority applications, the applicant bears the burden of proof regarding fitness and ability, safety standards, and the need for the proposed services in the area for which authority is sought. Once that burden is met, protestants have the burden of showing that the need is being met by existing carriers.<sup>[36]</sup>

Applicant proposes to provide a service that is qualitatively different from the normal C.O.D. household goods moving arrangement. Witnesses for the Applicant have credibly testified that their needs go beyond C.O.D. hauling. Further, the witnesses have shown that their experiences with existing household goods movers have shown that these haulers cannot meet these specialized needs.

Protestant called a number of witnesses from other permitted household goods movers. Applicant objected to the practice, maintaining that the witnesses should have filed protests. Protestant is entitled to call witnesses to meet its burden under the applicable statute.<sup>[37]</sup> Persons need not file a protest in order to provide evidence that is relevant to the issues in a permit proceeding.

Most of the Protestant's evidence shows that there is currently sufficient capacity to meet the needs of persons seeking C.O.D. hauling. The Protestant has not demonstrated that adequate capacity to exist to meet the needs of customers seeking corporate relocation services. Since these relocation services are significantly different from C.O.D. hauling, there is no impact on the existing carriers in Minnesota. Accordingly, Applicant's petition should be granted.

R.C.L.

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<sup>[1]</sup> Minn. Stat. § 221.121.

<sup>[2]</sup> Testimony of James Eastman.

<sup>[3]</sup> Exhibit 1, Appendix B; Testimony of Eastman.

<sup>[4]</sup> Exhibit 1, Appendix C.

<sup>[5]</sup> Testimony of Eastman.

<sup>[6]</sup> Testimony of Eastman.

<sup>[7]</sup> *Id.*

<sup>[8]</sup> Testimony of Eastman.

<sup>[9]</sup> *Id.*

<sup>[10]</sup> Testimony of Douglas Laundrie.

<sup>[11]</sup> Testimony of Laundrie.

<sup>[12]</sup> *Id.*

<sup>[13]</sup> *Id.*

<sup>[14]</sup> Testimony of Sikora.

<sup>[15]</sup> *Id.* CNH uses Mohawk Transportation for relocations to Canada, because Applicant lacks authority to operate in Canada.

<sup>[16]</sup> Testimony of Sikora.

<sup>[17]</sup> *Id.*

<sup>[18]</sup> *Id.*

<sup>[19]</sup> Testimony of Debra Armbruster.

<sup>[20]</sup> Testimony of Bill Werth.

<sup>[21]</sup> Testimony of Werth.

[22] Testimony of Douglas Harrison.

[23] Due to a recent sale, Metcalf is now owned by Archbold Movers Inc., but operates under the Metcalf name.

[24] Testimony of Casimir Prokop.

[25] Testimony of Prokop.

[26] Exhibit 6.

[27] Testimony of Douglas Bester.

[28] Exhibit 9.

[29] Exhibits 7 and 8.

[30] Testimony of Bester.

[31] Minn. Stat. § 221.121, subd. 6a.

[32] Minn. Stat. § 221.121, subd. 1(b).

[33] Minn. R. 7800.0100, subp. 4.

[34] ***Appeal of Signal Delivery Service, Inc.***, 288 N.W.2d 707, 712 (Minn. 1980).

[35] Minn. Stat. § 221.121, subd. 1(b).

[36] ***Appeal of Signal Delivery Serv., Inc.***, 288 N.W.2d 707, 712 (Minn. 1980); ***Five Star Trucking, Inc. v. Minnesota Transportation Regulation Board***, 370 N.W.2d 666, 671-72 (Minn.App. 1985).

[37] The witnesses appeared voluntarily. The ALJ does not reach the issue as to how such witness testimony can be compelled by subpoena. See M.R.C.P. Rule 45.06.